

(2) The business portions of the reports, applicable only to expenditure-based awards, must provide summarized details on the status of resources (federal funds and non-federal cost sharing), including an accounting of expenditures for the period covered by the report. The report should compare the resource status with any payment and expenditure schedules or plans provided in the original award; explain any major deviations from those schedules; and discuss actions that will be taken to address the deviations. You may require a recipient to separately identify in these reports the expenditures for each participant in a consortium and for each programmatic milestone or task, if you, after consulting with the program official, judge that those additional details are needed for good stewardship.

**§ 37.885 May I require updated program plans?**

In addition to reports on progress to date, your TIA may include a provision requiring the recipient to annually prepare updated technical plans for the future conduct of the research effort. If your TIA does include a requirement for annual program plans, you also must require the recipient to submit the annual program plans to the agreements officer responsible for administering the TIA.

**§ 37.890 Must I require a final performance report?**

You need not require a final performance report that addresses all major accomplishments under the TIA. If you do not do so, however, there must be an alternative that satisfies the requirement in DoD Instruction 3200.14<sup>7</sup> to document all DoD Science and Technology efforts and disseminate the results through the Defense Technical Information Center (DTIC). An example of an alternative would be periodic reports throughout the performance of the research that collectively cover the entire project.

**§ 37.895 How is the final performance report to be sent to the Defense Technical Information Center?**

(a) Whether your TIA requires a final performance report or uses an alternative means under § 37.890,<sup>8</sup> you may include an award term or condition or otherwise instruct the recipient to submit the documentation, electronically if available, either:

- (1) Directly to the DTIC; or
- (2) To the office that is administering the award (for subsequent transmission to the DTIC).

(b) If you specify that the recipient is to submit the report directly to the DTIC, you also:

- (1) Must instruct the recipient to include a fully completed Standard Form 298, "Report Documentation Page," with each document, so that the DTIC can recognize the document as being related to the particular award and properly record its receipt; and
- (2) Should advise the recipient to provide a copy of the completed Standard Form 298 to the agreements officer responsible for administering the TIA.

**§ 37.900 May I tell a participant that information in financial and programmatic reports will not be publicly disclosed?**

You may tell a participant that:

- (a) We may exempt from disclosure under the Freedom of Information Act (FOIA) a trade secret or commercial and financial information that a participant provides after the award, if the information is privileged or confidential information. The DoD Component that receives the FOIA request will review the information in accordance with DoD procedures at 32 CFR 286.23(h) (and any DoD Component supplementary procedures) to determine whether it is privileged or confidential information under the FOIA exemption at 5 U.S.C. 552(b)(4), as implemented by the DoD at 32 CFR 286.12(d).
- (b) If the participant also provides information in the course of a competition prior to award, there is a statutory exemption for five years from

<sup>8</sup>Additional information on electronic submission to the DTIC can be found online, currently at [http://www.dtic.mil/dtic/submitting/elec\\_subm.html](http://www.dtic.mil/dtic/submitting/elec_subm.html).

<sup>7</sup>See footnote 6 to § 37.875(b)(1).

FOIA disclosure requirements for certain types of information submitted at that time (see § 37.420).

**§ 37.905 Must I make receipt of the final performance report a condition for final payment?**

If a final report is required, your TIA should make receipt of the report a condition for final payment. If the payments are based on payable milestones, the submission and acceptance of the final report by the Government representative will be incorporated as an event that is a prerequisite for one of the payable milestones.

**RECORDS RETENTION AND ACCESS REQUIREMENTS**

**§ 37.910 How long must I require participants to keep records related to the TIA?**

Your TIA must require participants to keep records related to the TIA (for which the agreement provides Government access under § 37.915) for a period of three years after submission of the final financial status report for an expenditure-based TIA or final programmatic status report for a fixed-support TIA, with the following exceptions:

(a) The participant must keep records longer than three years after submission of the final financial status report if the records relate to an audit, claim, or dispute that begins but does not reach its conclusion within the 3-year period. In that case, the participant must keep the records until the matter is resolved and final action taken.

(b) Records for any real property or equipment acquired with project funds under the TIA must be kept for three years after final disposition.

**§ 37.915 What requirement for access to a for-profit participant's records do I include in a TIA?**

(a) If a for-profit participant currently grants access to its records to the DCAA or other Federal Government auditors, your TIA must include for that participant the standard access-to-records requirements at 32 CFR 34.42(e). If the agreement is a fixed-support TIA, the language in 32 CFR 34.42(e) may be modified to provide ac-

cess to records concerning the recipient's technical performance, without requiring access to the recipient's financial or other records. Note that any need to address access to technical records in this way is in addition to, not in lieu of, the need to address rights in data (see § 37.845).

(b) For other for-profit participants that do not currently give the Federal Government direct access to their records and are not willing to grant full access to records pertinent to the award, there is no set requirement to include a provision in your TIA for Government access to records. If the audit provision of an expenditure-based TIA gives an IPA access to the recipient's financial records for audit purposes, the Federal Government must have access to the IPA's reports and working papers and you need not include a provision requiring direct Government access to the recipient's financial records. For both fixed-support and expenditure-based TIAs, you may wish to negotiate Government access to recipient records concerning technical performance. Should you negotiate a provision giving access only to specific Government officials (e.g., the agreements officer), rather than a provision giving Government access generally, it is important to let participants know that the OIG, DoD, has a statutory right of access to records and other materials to which other DoD Component officials have access.

**§ 37.920 What requirement for access to a nonprofit participant's records do I include in a TIA?**

Your TIA must include for any nonprofit participant the standard access-to-records requirement at:

(a) 32 CFR 33.42(e), for a participant that is a State or local governmental organization.

(b) 32 CFR 32.53(e), for a participant that is a nonprofit organization. The same requirement applies to any nonprofit GOCO or FFRDC, even though nonprofit GOCOs and FFRDCs are exempted from the definition of "recipient" in 32 CFR part 32.